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North American Steel Erection, L.L.C., f/k/a American Steel Erection, L.L.C. and Local 25, International Association of Bridge, Structural, Ornamental, Rigging, Machinery Erectors and Reinforced Iron Workers, AFL-CIO. Case 7-CA-39656

December 31, 1997

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on March 27, 1997, the General Counsel of the National Labor Relations Board issued a complaint on June 30, 1997, against North American Steel Erection, L.L.C., f/k/a American Steel Erection, L.L.C., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on November 24, 1997.

On December 4, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On December 8, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on November 24, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Roseville, Michigan, has been engaged in the erection of structural steel. During the year ending December 31, 1996, the Respondent, in conducting its business operations, performed services valued in excess of \$50,000 in the State of Michigan for Vandellen Steel Company, an enterprise itself directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Charging Party Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 20, on two occasions on October 21, and October 23, 1996, the Respondent coercively interrogated job applicants concerning their membership in the Union.

About October 20, on two occasions on October 21, October 22, and October 23, 1996, the Respondent advised job applicants that the Respondent would not consider for employment or hire applicants who were members of the Union.

Since about October 17, 1996, and continuing to date, the Respondent has refused to consider for employment and/or has refused to hire applicants for employment because of their membership in the Union.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By refusing to consider for employment and/or refusing to hire applicants for employment because of their membership in the Union, the Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent violated Section 8(a)(3) and

(1) by refusing to consider for employment and/or refusing to hire applicants for employment since October 17, 1996, because of their membership in the Union, we shall order the Respondent to offer these applicants immediate employment in positions which they would have had but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.¹ Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, North American Steel Erection, L.L.C., f/k/a American Steel Erection, L.L.C., Roseville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating job applicants concerning their membership in Local 25, International Association of Bridge, Structural, Ornamental, Rigging, Machinery Erectors and Reinforced Iron Workers, AFL-CIO.

(b) Advising job applicants that it would not consider for employment or hire applicants who are members of the Union.

(c) Refusing to consider for employment and/or refusing to hire applicants for employment because of their membership in the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer applicants who have applied for employment with the Respondent since October 16, 1996, immediate employment in positions which they would have had but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

(b) Make the discriminatees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire the discriminatees, and within 3 days thereafter notify the discriminatees in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination

¹ The determination of the identity of the applicants will be left for the compliance stage of this proceeding.

and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Roseville, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 17, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 31, 1997

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT interrogate job applicants concerning their membership in Local 25, International Association of Bridge, Structural, Ornamental, Rigging, Machinery Erectors and Reinforced Iron Workers, AFL-CIO.

WE WILL NOT advise job applicants that we will not consider for employment or hire applicants who are members of the Union.

WE WILL NOT refuse to consider for employment and/or refuse to hire applicants for employment because of their membership in the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer applicants who have applied for employment since October 16, 1996, immediate employ-

ment in positions which they would have had but for our unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

WE WILL make the discriminatees whole for any loss of earnings and other benefits suffered as a result of our discrimination against them in the manner set forth in a decision of the National Labor Relations Board.

WE WILL remove from our files any reference to the unlawful refusal to hire the discriminatees.

NORTH AMERICAN STEEL ERECTION,
L.L.C., F/K/A AMERICAN STEEL EREC-
TION, L.L.C.